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Secretariat for Multidimensional Security

**XLVII MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
September 24 to 25, 2019.
Bogota – Colombia**

**OEA/Ser.L/XLV.4.47
DDOT/LAVEX/doc.19/19
September 24, 2019
Original: Spanish**

**PRESENTATION
ENFORCEMENT OF FOREIGN JUDGMENTS**



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Enforcement of Foreign Judgments



U.S. ENFORCEMENT OF FOREIGN RESTRAINING ORDER

28 U.S.C. § 2467

- Treaty or Agreement for Mutual Forfeiture Assistance
- Dual Criminality- Any Foreign Offense Conduct that would be a Forfeitable U.S. "Federal" Violation if Foreign Criminal Acts were Committed in the U.S. Covers more than 200 crimes. Test is conduct based.
- Attorney General Certification of Foreign Judgment (must be authenticated or certified by issuing Court).
- Covers both foreign Criminal, *in rem* or other Non-Conviction based Confiscation proceeding
 - Order may specifically identify property in the U.S.;
 - Or may restrain all assets belonging to an accused in the U.S.

Defenses/Objections

- Interested party may not object to U.S. restraining order on any ground which is subject of the parallel forfeiture proceeding in the foreign country;
- The U.S. district court is bound by the findings of fact as stated in the foreign forfeiture or confiscation order;
- Parties may object based on deficiency of:
 - Foreign order issued inconsistent with due process. i.e.
 - - Service of Notice in the foreign country;
 - Lack of an opportunity to raise a defense;
 - Judge is not a neutral decision maker
 - Lack of subject matter jurisdiction;
 - Restraining Order Obtained by Fraud

Enforcing Foreign Judgments of Forfeiture/Confiscation [28 U.S.C. § 2467(d)(1)]

- **Must be final, non-appealable judgment of forfeiture or confiscation obtained in foreign court (conviction or non-conviction based);**
- **Foreign proceeding was compatible with “requirements of due process of law”;**
- **Foreign court had personal jurisdiction over defendant;**
- **Foreign court had subject matter jurisdiction;**
- **Foreign government took steps to give notice of the proceedings to any person with an interest in the property in sufficient time to assert a defense;**
- **The judgment was not obtained by fraud;**
- **Must have certified copy of Judgment or Order.**

RESTRAINING ORDER REQUIREMENT FOR FOREIGN “COURT ORDER”

28 U.S.C. § 2467

- 28 U.S. § 2467(d)(3)(B)(ii) requires that the foreign restraining order
 “has been issued by a *court* of competent jurisdiction in the foreign country”
(Emphasis added.)
- Consequently, a restraining order issued by a foreign *prosecutor* is not adequate.
- This is because of (1) literal reading of statute, and (2) constitutional concern about no independent review of sufficiency of evidence to support the restraint.

RESTRAINING ORDER REQUIREMENT FOR FOREIGN “COURT ORDER”

- The 2017 Colombian amendments added a critical new provision regarding “International Assistance and Cooperation” in Colombian forfeiture cases that addresses “Precautionary Measures for Property Abroad.” Article 208A of Law 1708 now provides that:

The Office of the Attorney General will be entitled to request the competent authority in the cooperating country for the implementation of asset freezing related to property overseas subject to asset forfeiture. *These measures will be subject to corresponding legal review before the asset forfeiture judges in order that they have full legal effect in the foreign country.*

(Emphasis added.) Consequently, judicial review and approval of precautionary measures ordered by the prosecutor against assets located outside of Colombian is now required by Colombian law.



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